

SENATE BILL No. 498

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-2.2; IC 36-8.

Synopsis: Police and firefighter pensions. Authorizes the legislative body of a second class city to adopt an ordinance to compute the benefits paid to the members of the city's public safety pension funds based on the average of the member's salary for the highest paid three years rather than the salary of a first class police officer or firefighter.

Effective: July 1, 2004.

Broden

January 13, 2004, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 498

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-8-2.2, AS AMENDED BY P.L.86-2003,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 2.2. (a) As used in this section, "dependent"
4 means a natural child, a stepchild, or an adopted child of a public
5 safety employee who:

6 (1) is less than eighteen (18) years of age;

7 (2) is eighteen (18) years of age or older and physically or
8 mentally disabled (using disability guidelines established by the
9 Social Security Administration); or

10 (3) is at least eighteen (18) and less than twenty-three (23) years
11 of age and is enrolled in and regularly attending a secondary
12 school or is a full-time student at an accredited college or
13 university.

14 (b) As used in this section, "public safety employee" means a
15 full-time firefighter, police officer, county police officer, or sheriff.

16 (c) This section applies only to local unit public employers and their
17 public safety employees.

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(d) A local unit public employer may provide programs of group health insurance for its active and retired public safety employees through one (1) of the following methods:

- (1) By purchasing policies of group insurance.
- (2) By establishing self-insurance programs.
- (3) By electing to participate in the local unit group of local units that offer the state employee health plan under section 6.6 of this chapter.

A local unit public employer may provide programs of group insurance other than group health insurance for the local unit public employer's active and retired public safety employees by purchasing policies of group insurance and by establishing self-insurance programs. However, the establishment of a self-insurance program is subject to the approval of the unit's fiscal body.

(e) A local unit public employer may pay a part of the cost of group insurance for its active and retired public safety employees. However, a local unit public employer that provides group life insurance for its active and retired public safety employees shall pay a part of the cost of that insurance.

(f) A local unit public employer may not cancel an insurance contract under this section during the policy term of the contract.

(g) ~~After June 30, 1989,~~ A local unit public employer that provides a group health insurance program for its active public safety employees shall also provide a group health insurance program to the following persons:

- (1) Retired public safety employees.
- (2) Public safety employees who are receiving disability benefits under IC 36-8-6, IC 36-8-7, IC 36-8-7.5, IC 36-8-8, or IC 36-8-10.
- (3) Surviving spouses and dependents of public safety employees who die while in active service or after retirement.

(h) A retired or disabled public safety employee who is eligible for group health insurance coverage under subsection (g)(1) or (g)(2):

- (1) may elect to have the person's spouse, dependents, or spouse and dependents covered under the group health insurance program at the time the person retires or becomes disabled;
- (2) must file a written request for insurance coverage with the employer within ninety (90) days after the person retires or begins receiving disability benefits; and
- (3) must pay an amount equal to the total of the employer's and the employee's premiums for the group health insurance for an active public safety employee (however, the employer may elect to pay any part of the person's premiums).

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(i) Except as provided in IC 36-8-6-9.7(f), ~~IC 36-8-6-10.1(h)~~,
IC 36-8-6-10.1(k), IC 36-8-7-12.3(g), ~~IC 36-8-7-12.4(j)~~,
IC 36-8-7-12.4(m), IC 36-8-7.5-13.7(h), IC 36-8-7.5-14.1(i),
 IC 36-8-8-13.9(d), ~~IC 38-8-8-14.1(h)~~, **IC 36-8-8-14.1(i)**, and
 IC 36-8-10-16.5 for a surviving spouse or dependent of a public safety
 employee who dies in the line of duty, a surviving spouse or dependent
 who is eligible for group health insurance under subsection (g)(3):

- (1) may elect to continue coverage under the group health insurance program after the death of the public safety employee;
- (2) must file a written request for insurance coverage with the employer within ninety (90) days after the death of the public safety employee; and
- (3) must pay the amount that the public safety employee would have been required to pay under this section for coverage selected by the surviving spouse or dependent (however, the employer may elect to pay any part of the surviving spouse's or dependent's premiums).

(j) A retired or disabled public safety employee's eligibility for group health insurance under this section ends on the earlier of the following:

- (1) When the public safety employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the employer terminates the health insurance program for active public safety employees.

(k) A surviving spouse's eligibility for group health insurance under this section ends on the earliest of the following:

- (1) When the surviving spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the unit providing the insurance terminates the health insurance program for active public safety employees.
- (3) The date of the surviving spouse's remarriage.
- (4) When health insurance becomes available to the surviving spouse through employment.

(l) A dependent's eligibility for group health insurance under this section ends on the earliest of the following:

- (1) When the dependent becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the unit providing the insurance terminates the health insurance program for active public safety employees.
- (3) When the dependent no longer meets the criteria set forth in subsection (a).
- (4) When health insurance becomes available to the dependent

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through employment.

(m) A public safety employee who is on leave without pay is entitled to participate for ninety (90) days in any group health insurance program maintained by the local unit public employer for active public safety employees if the public safety employee pays an amount equal to the total of the employer's and the employee's premiums for the insurance. However, the employer may pay all or part of the employer's premium for the insurance.

(n) A local unit public employer may provide group health insurance for retired public safety employees or their spouses not covered by subsections (g) through (l) and may provide group health insurance that contains provisions more favorable to retired public safety employees and their spouses than required by subsections (g) through (l). A local unit public employer may provide group health insurance to a public safety employee who is on leave without pay for a longer period than required by subsection (m), and may continue to pay all or a part of the employer's premium for the insurance while the employee is on leave without pay.

SECTION 2. IC 36-8-1-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.5. (a) This section applies to a second class city if the legislative body of the city adopts an ordinance authorizing the computation of the benefits paid to the city's police officers and firefighters who:**

(1) retire or become disabled after the date specified in the ordinance; and

(2) are members of the:

(A) 1925 police pension fund established by city under IC 36-8-6 (1925 fund);

(B) 1937 firefighters' pension fund established by the city under IC 36-8-7 (1937 fund); or

(C) 1977 police officers' and firefighters' pension and disability fund established by IC 36-8-8 (1977 fund);

using the average salary of the member computed in subsection (c).

(b) "Salary of the member" means the basic salary earned by and paid to a member of the:

(1) police department; or

(2) fire department;

annually plus all longevity increases, if provided by the employer, but does not include remuneration or allowances for fringe benefits, incentive pay, holiday pay, insurance, clothing, automobiles, firearms, education, overtime, or compensatory time

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(c) "Average salary of the member" means the average of the salary of the member calculated using the three (3) years of service in a position covered by the 1925 fund, 1937 fund, or 1977 fund in which the salary of the member was the highest.

SECTION 3. IC 36-8-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The police chief or fire chief may be granted a leave of absence by the authority who appointed him. This appointing authority may also grant a leave of absence to any other full-time, fully paid police officer or firefighter.

(b) A leave of absence under subsection (a) shall be granted for service in the ~~Indiana~~ general assembly and may also be granted only for one (1) of the following reasons:

(1) Sickness.

(2) Disability.

(3) Sabbatical purposes.

However, a leave of absence because of disability may not be granted to a member of the 1977 fund under this subsection unless a leave granted under subsection (g) has expired without disability benefits having been paid from the 1977 fund. In the case of such an expiration, a leave for purposes of disability may be granted under this subsection but only until the member's eligibility for disability benefits is finally determined.

(c) Before a leave of absence may be granted for sabbatical purposes, the member must submit a written request explaining and justifying the leave to the appointing authority. Sabbatical purposes must be related to the improvement of the member's professional performance and skills, such as education, special training, work related experience, and exchange programs.

(d) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A leave of absence may extend for a period of not more than one (1) year, determined by the appointing authority, and may be renewed upon written request of the member.

(e) This subsection applies to leaves of absence granted for service in the ~~Indiana~~ general assembly. If a police officer or firefighter serves in the general assembly, ~~he~~ **the police officer or firefighter** shall be granted a leave for the time spent in this service, including the time spent for committee or legislative council meetings.

(f) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A member on leave may receive compensation in an amount determined by the appointing authority, up to a maximum amount that equals ~~his~~ **the member's** salary before the

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1 leave began.

2 (g) This subsection applies only to members of the 1977 fund. The
3 local board may grant a leave of absence for purposes of disability to
4 full-time, fully paid police officers or firefighters (including the police
5 chief or fire chief). The leave is subject to the following conditions:

6 (1) The police chief or fire chief must make a written
7 determination that there is no suitable and available work on the
8 appropriate department for which the fund member is or may be
9 capable of becoming qualified.

10 (2) The leave must be approved by the local board after a hearing
11 conducted under IC 36-8-8-12.7.

12 (3) The leave may not begin until the police officer or firefighter
13 has exhausted all paid leave for sickness.

14 (4) The leave shall continue until disability benefits are paid from
15 the 1977 fund. However, the leave may not continue for more
16 than six (6) months.

17 (5) During the leave:

18 (A) the police officer or firefighter is entitled to receive
19 compensation in an amount equal to fifty percent (50%) of the
20 salary of a first class patrolman or first class firefighter on the
21 date the leave begins; or

22 **(B) for a second class city that adopts an ordinance under**
23 **IC 36-8-1-11.5, a member of a police department or a**
24 **member of a fire department may receive compensation in**
25 **an amount determined by the appointing authority, up to**
26 **a maximum amount that equals the salary of the member**
27 **before the leave began.**

28 Payments of compensation under this subsection may not be made from
29 the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund.

30 (h) Determinations under subsection (g) are not reviewable by the
31 board of trustees of the public employees' retirement fund.

32 SECTION 4. IC 36-8-6-4 IS AMENDED TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The 1925 fund is derived
34 from the following sources:

35 (1) From money or other property that is given to the local board
36 for the use of the fund. The local board may take by gift, grant,
37 devise, or bequest of any money, chose in action, personal
38 property, or real property, or an interest in it. The local board shall
39 take the property in the name of the local board and may hold,
40 assign, transfer, or sell it.

41 (2) From money, fees, and awards that are paid or given to the
42 police department of the municipality or to a member of the

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department because of service or duty performed by the department or a member. This includes fines imposed by the safety board against a member of the department, as well as the proceeds from the sale of lost, stolen, and confiscated property recovered or taken into possession by members of the police department in the performance of their duties and sold at a public sale in accordance with law.

(3) From an assessment made during the period of ~~his~~ **a member's** employment or for thirty-two (32) years, whichever is shorter, on the salary of each member whom the local board has accepted and designated as a beneficiary of the 1925 fund:

(A) an amount equal to six percent (6%) of the salary of a first class patrolman; **or**

(B) for a second class city that adopts an ordinance under IC 36-8-1-11.5, an amount equal to six percent (6%) of the salary of the member.

However, the employer may pay all or a part of the assessment for the member.

(b) The secretary of the local board shall prepare a roll of each of the assessments and place opposite the name of every member of the police department the amount of the assessment against ~~him~~ **the member**. The treasurer of the local board shall retain out of the salary paid to the member each month the amount of the assessment, other than any amount paid on behalf of the member, and credit it to the 1925 fund. Except to the extent the assessment is paid on behalf of the member, every person becoming a member of the police department is liable for the payment of the assessments and is conclusively considered to agree to pay it and have it deducted from ~~his~~ **the person's** salary as required in this section.

SECTION 5. IC 36-8-6-8, AS AMENDED BY P.L.185-2002, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) For a member who became disabled before July 1, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding:

(1) for a disability or disease occurring before July 1, 1982, fifty percent (50%); ~~and~~

(2) for a disability or disease occurring after June 30, 1982, fifty-five percent (55%) of the salary of a first class patrolman; **or**

(3) for a second class city that adopts an ordinance under IC 36-8-1-11.5, fifty-five percent (55%) of the average of the salary of the member;

to a member of the police department who has suffered or contracted

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a mental or physical disease or disability that renders the patrolman unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(b) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the

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Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is not described in subsection (b)(1); and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(d) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. For a member who becomes disabled, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the average salary of the member, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of

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the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(e) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. For a member who becomes disabled, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the average salary of the member, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is not described in subsection (d)(1); and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(f) The member must have retired from active service after a physical examination by the police surgeon or another surgeon appointed by the local board. The disability must be determined solely by the local board after the examination and a hearing conducted under IC 36-8-8-12.7. A member shall be retained on active duty with full pay until the member is retired by the local board because of the disability.

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1 ~~(e)~~ (g) After a member has been retired upon pension, the local
 2 board may, at any time, require the retired member to again be
 3 examined by the police surgeon or another surgeon appointed by the
 4 local board. After the examination the local board shall conduct a
 5 hearing under IC 36-8-8-12.7 to determine whether the disability still
 6 exists and whether the retired member should remain on the pension
 7 roll. The retired member shall be retained on the pension roll until
 8 reinstated in the service of the police department, except in case of
 9 resignation. If after the examination and hearing the retired member is
 10 found to have recovered from the member's disability and to be again
 11 fit for active duty, then the member shall be put on active duty with full
 12 pay and from that time is no longer entitled to payments from the 1925
 13 fund. If the member fails or refuses to return to active duty, the member
 14 waives all rights to further benefits from the 1925 fund.

15 ~~(f)~~ (h) If the salary of a first class patrolman is increased or
 16 decreased, the pension payable **under subsection (a)(1), (a)(2), (b), or**
 17 **(c)** shall be proportionately increased or decreased. However, the
 18 monthly pension payable to a member or survivor may not be reduced
 19 below:

20 (1) the amount of the first full monthly pension received by that
 21 person; or

22 (2) fifty-five percent (55%) of the salary of a first class patrolman;
 23 whichever is greater.

24 ~~(g)~~ (i) Time spent receiving disability benefits is considered active
 25 service for the purpose of determining retirement benefits until the
 26 member has a total of twenty (20) years of service.

27 ~~(h)~~ (j) A fund member who is receiving disability benefits under this
 28 chapter shall be transferred from disability to regular retirement status
 29 when the member becomes fifty-five (55) years of age.

30 SECTION 6. IC 36-8-6-9 IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Benefits paid under this
 32 section are subject to section 1.5 of this chapter.

33 (b) **Except as provided in subsection (c),** the 1925 fund shall be
 34 used to provide a member of the police department who retires from
 35 active duty after twenty (20) or more years of active duty an annual
 36 pension equal to fifty percent (50%) of the salary of a first class
 37 patrolman in the police department, plus:

38 (1) for a member who retires before January 1, 1986, two percent

39 (2%) of the first class patrolman's salary for each year of service;
 40 or

41 (2) for a member who retires after December 31, 1985, one
 42 percent (1%) of the first class patrolman's salary for each six (6)

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months of service;
of the retired member over twenty (20) years. However, the pension may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman. The pensions shall be computed on an annual basis but shall be paid in not less than twelve (12) equal monthly installments. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased.

(c) **This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The 1925 fund shall be used to provide a member of the police department who retires from active duty after at least twenty (20) years of service an annual pension equal to fifty percent (50%) of the average salary of the member. The pension shall be computed on an annual basis but shall be paid in not less than twelve (12) equal monthly installments.**

(d) If a member voluntarily retires after twenty (20) or more years of service, the member is entitled to retirement and the pension, without reference to ~~his~~ **the member's** physical condition at the time of application. However, ~~he~~ **the member** then relinquishes all rights to other benefits or pensions for temporary disability. After retirement the member is not required to render further services on the police department, is no longer subject to the rules of the department, and may not be deprived of other benefits under this chapter that may accrue to ~~him~~ **the member** or ~~his~~ **the member's** dependents.

~~(d)~~ (e) To be retired based upon length of service, only the time served by the member on the regularly constituted police department may be computed. Time served by a member as a special police officer, a merchant police officer, or a private police officer may not be considered in computing length of service.

SECTION 7. IC 36-8-6-9.6, AS ADDED BY P.L.118-2000, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9.6. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 10.1 of this chapter).

(b) A payment shall be made to the surviving spouse of a deceased member in an amount fixed by ordinance, but at least an amount equal to the following:

- (1) To the surviving spouse of a member who died before January 1, 1989, an amount equal to thirty percent (30%) of the monthly pay of a first class patrolman per month during the surviving spouse's life if the spouse did not remarry before September 1, 1983. If the spouse remarried before September 1, 1983, and

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benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(2) Except as otherwise provided in this ~~subdivision~~, **subsection**, to the surviving spouse of a member who dies after December 31, 1988, an amount per month, during the spouse's life, equal to the greater of:

(A) thirty percent (30%) of the monthly pay of a first class patrolman; or

(B) fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death.

However, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for purposes of computing the amount under clause (B), the member's benefit shall be considered to be fifty percent (50%) of the monthly salary of a first class patrolman. The amount provided in this subdivision is subject to adjustment as provided in subsection (e).

(3) This subdivision applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. To the surviving spouse of a member, an amount per month, during the spouse's life, equal to fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death. However, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for purposes of computing the amount, the member's benefit shall be considered to be fifty percent (50%) of the monthly salary of the member at the time of death.

(c) Except as otherwise provided in this subsection, a payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman **except for a second class city that adopts an ordinance under IC 36-8-1-11.5, in which case the amount must be at least equal to twenty percent (20%) of the monthly salary of the member at the time of death**, per month:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

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(3) during the entire period of the child's physical or mental disability;

whichever period is longer. However, the total of benefits under this subsection added to the benefits under subsection (b) may not exceed the maximum benefits computed under section 9 of this chapter for pension payments to a member who retires from active service after twenty (20) years or more of active service. ~~This maximum benefit is equal to fifty percent (50%) of the salary of a first class patrolman in the police department plus, for a member who retired before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service of the retired member over twenty (20) years or, for a member who retires after December 31, 1985, plus one percent (1%) of the first class patrolman's salary for each six (6) months of service of the retired member over twenty (20) years. However, the maximum benefit may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman.~~

(d) Except as otherwise provided in this subsection, if a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection (c) but does leave a dependent parent or parents, an amount equal to:

(1) twenty percent (20%) of the monthly pay of a first class patrolman; **or**

(2) for a second class city that adopts an ordinance under IC 36-8-1-11.5, twenty percent (20%) of the salary of the member at the time of death;

per month from the time of the member's death shall be paid to the dependent parent or parents during ~~their~~ **the** dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. The board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the fund or other circumstances make this action necessary.

(e) If the salary of a first class patrolman **as provided under subsection (b)(1) or (b)(2)** is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

SECTION 8. IC 36-8-6-10.1, AS AMENDED BY P.L.86-2003,



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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10.1. (a) This section applies to a member who dies in the line of duty after August 31, 1982.

(b) **Except as provided in subsection (c),** the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but no less than fifty percent (50%) of the monthly wage received by a first class patrolman. If the surviving spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(c) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a member at the time of death.

~~(c)~~ (d) **Except as provided in subsection (f),** a payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month to each child:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longer.

~~(d)~~ (e) The surviving children of the deceased member who are eligible to receive a benefit under subsection ~~(c)~~ (d) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(f) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. A payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly salary of the member at

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the time of death per month to each child:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest.

(g) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The surviving children of the deceased member who are eligible to receive a benefit under subsection (f) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the salary of the member at the time of death. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

~~(e)~~ (h) If a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection ~~(c)~~ (d) or (f) but does leave a dependent parent or parents, an amount equal to:

- (1) twenty percent (20%) of the monthly pay of a first class patrolman; or
- (2) for a second class city that adopts an ordinance under IC 36-8-1-11.5, twenty percent (20%) of the salary of the member at the time of death;

per month from the time of the member's death shall be paid to the dependent parent or parents during ~~their~~ the dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. The board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the fund or other circumstances make this action necessary.

~~(f)~~ (i) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

~~(g)~~ (j) For purposes of this section, "dies in the line of duty" means

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death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from any action that the member in the member's capacity as a police officer:

- (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (2) performs in the course of controlling or reducing crime or enforcing the criminal law.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

~~(h)~~ **(k)** The unit of local government that employed the deceased member shall ~~after December 31, 2003~~, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for the coverage under subdivision (1), (2), or (3).

SECTION 9. IC 36-8-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. **(a) Except as provided in subsection (b),** the 1925 fund shall be used to pay an amount, equal to the pensions provided by this chapter in the case of voluntary retirement after twenty (20) years service, to a member of the police department who is dismissed for any reason after having been in actual service for twenty (20) years, including two percent (2%) additional for each full year of service in excess of twenty (20) years service. However, a pension under this section may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman.

(b) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The 1925 fund shall be used to pay an amount equal to the pensions provided by this chapter in the case of voluntary retirement after twenty (20) years service to a member of the police department who is dismissed for any reason

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1 after having been in actual service at least twenty (20) years.

2 SECTION 10. IC 36-8-6-22 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2004]: Sec. 22. (a) This section applies to a second class city that
5 adopts an ordinance under IC 36-8-1-11.5.

6 (b) A cost of living adjustment to the monthly benefit of a
7 member of the 1925 fund is determined in the same manner as a
8 cost of living adjustment to the monthly benefit of a member of the
9 1977 police officers' and firefighters' pension and disability fund
10 is determined under IC 36-8-8-15.

11 SECTION 11. IC 36-8-7-8 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The 1937 fund is
13 derived from the following sources:

14 (1) From all money and other property that is given to the local
15 board or 1937 fund for the uses and purposes for which the fund
16 is created. The local board may take by gift, grant, devise, or
17 bequest any money, personal property, real estate, or an interest
18 in it. The gift, grant, devise, or bequest may be absolute or in fee
19 simple or upon the condition that only the rents, income, or profits
20 arising from it may be applied to the purposes for which the fund
21 is established.

22 (2) All money, fees, rewards, or emoluments that are paid, given,
23 devised, or bequeathed to the fire department or one (1) of the fire
24 companies.

25 (3) All money accruing as interest on the securities or investments
26 that are owned by and held in the name of the local board.

27 (4) All money received by the local board from the sale or by the
28 maturity of securities or investments owned by the local board.

29 (5) An assessment made during the period of ~~his~~ a member's
30 employment or for thirty-two (32) years, whichever is shorter, on
31 the salary of each member equal to:

32 (A) six percent (6%) of the salary of a fully paid first class
33 firefighter; or

34 (B) for a second class city that adopts an ordinance under
35 IC 36-8-1-11.5, six percent (6%) of the salary of the
36 member.

37 However, the employer may pay all or a part of the assessment for
38 the member. The secretary of the fire department, or the person
39 whose duty it is to make out the payrolls, shall place on the
40 payroll opposite the name of every member the amount of
41 assessment on ~~his~~ the member's salary. The unit's fiscal officer
42 shall deduct monthly from the salary of every member the sum

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1 listed opposite ~~his~~ **the member's** name, other than any amount
 2 paid on behalf of the member, and shall credit that amount to the
 3 1937 fund. Except to the extent the assessment is paid on behalf
 4 of the member, every person who becomes a member of the fire
 5 department is liable for the assessment and is conclusively
 6 considered to agree to pay it by having it deducted from ~~his~~ **the**
 7 **member's** salary as required in this section.

8 (6) Appropriations that are made for the fund by the unit's fiscal
 9 body.

10 SECTION 12. IC 36-8-7-11, AS AMENDED BY P.L.185-2002,
 11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2004]: Sec. 11. (a) Benefits paid under this section are subject
 13 to section 2.5 of this chapter.

14 (b) If a member of the fire department becomes seventy (70) years
 15 of age or is found upon examination by a medical officer to be
 16 physically or mentally disabled and unable to perform the essential
 17 functions of the job, considering reasonable accommodation to the
 18 extent required by the Americans with Disabilities Act, so as to make
 19 necessary the person's retirement from all service with the department,
 20 the local board shall retire the person.

21 (c) The local board may retire a person for disability only after a
 22 hearing conducted under IC 36-8-8-12.7.

23 (d) If after the hearing the local board determines that a person who
 24 became disabled before July 1, 2000, is disabled and unable to perform
 25 the essential functions of the job, considering reasonable
 26 accommodation to the extent required by the Americans with
 27 Disabilities Act, the local board shall then authorize the monthly
 28 payment to the person from the 1937 fund of an amount equal to
 29 fifty-five percent (55%) of the salary of a fully paid first class
 30 firefighter in the unit at the time of the payment of the pension. All
 31 physical and mental examinations of members of the fire department
 32 shall be made on order of the local board by a medical officer
 33 designated by the local board.

34 (e) **Except as otherwise provided in this section,** if after the
 35 hearing under this section and a recommendation under section 12.5 of
 36 this chapter, the 1977 fund advisory committee determines that a
 37 person who becomes disabled after June 30, 2000:

38 (1) has a disability that is:

39 (A) the direct result of:

40 (i) a personal injury that occurs while the fund member is on
 41 duty;

42 (ii) a personal injury that occurs while the fund member is

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responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) **Except as otherwise provided in this section**, if after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is not a disability described in subsection (e)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of

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members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(g) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. If, after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person:

(1) has a disability that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the average salary of the member before the date of the disability. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

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1 **(h) This subsection applies to a second class city that adopts an**
 2 **ordinance under IC 36-8-1-11.5. If, after the hearing under this**
 3 **section and a recommendation under section 12.5 of this chapter,**
 4 **the 1977 fund advisory committee determines that a person:**

5 **(1) has a disability that is not a disability described in**
 6 **subsection (g)(1); and**

7 **(2) is unable to perform the essential functions of the job,**
 8 **considering reasonable accommodation to the extent required**
 9 **by the Americans with Disabilities Act;**

10 **the local board shall then authorize the monthly payment to the**
 11 **person from the 1937 fund of an amount equal to fifty-five percent**
 12 **(55%) of the average salary of the member before the date of the**
 13 **disability. All physical and mental examinations of members of the**
 14 **fire department shall be made on order of the local board by a**
 15 **medical officer designated by the local board.**

16 SECTION 13. IC 36-8-7-12.1, AS AMENDED BY P.L.118-2000,
 17 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2004]: Sec. 12.1. (a) Benefits paid under this section are
 19 subject to section 2.5 of this chapter.

20 **(b) Except as otherwise provided in this section,** a member who
 21 has been in service twenty (20) years, upon making a written
 22 application to the fire chief, may be retired from all service with the
 23 department without a medical examination or disability. Except as
 24 provided in subsection ~~(f)~~ **(g)**, the local board shall authorize the
 25 payment to the retired member of fifty percent (50%) of the salary of
 26 a fully paid first class firefighter of the unit at the time of the payment
 27 of the pension, plus:

28 **(1) for a member who retires before January 1, 1986, two percent**
 29 **(2%) of that salary for each year of service; or**

30 **(2) for a member who retires after December 31, 1985, one**
 31 **percent (1%) of that salary for each six (6) months of service;**
 32 over twenty (20) years. However, the pension in one (1) year may not
 33 exceed an amount greater than seventy-four percent (74%) of the salary
 34 of a fully paid first class firefighter.

35 **(c) This subsection applies to a second class city that adopts an**
 36 **ordinance under IC 36-8-1-11.5. A member who has been in service**
 37 **at least twenty (20) years, upon making a written application to the**
 38 **fire chief, may be retired from all service with the department**
 39 **without a medical examination or disability. The local board shall**
 40 **authorize the payment to the retired member of fifty percent**
 41 **(50%) of the average salary of the member on the date of the**
 42 **member's retirement.**

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(d) A member who is discharged from the fire department after having served at least twenty (20) years is entitled to receive the amount **under subsection (b) or (c)** equal to the amount that the member would have received if the member retired voluntarily.

~~(d)~~ (e) All pensions in a class are on an equal basis. The local board may not depart from this chapter in authorizing the payment of pensions.

~~(e)~~ (f) The monthly pension payable to a member may not be reduced below the amount of the first full monthly pension received by that person.

~~(f)~~ (g) The monthly pension payable to a member who is transferred from disability to regular retirement status **and received benefits under section 11(e) or 11(f) of this chapter** may not be reduced below fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

~~(g)~~ (h) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

~~(h)~~ (i) A fund member who is receiving disability benefits under this chapter shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

SECTION 14. IC 36-8-7-12.2, AS ADDED BY P.L.118-2000, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12.2. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 12.4 of this chapter).

(b) If a member of the fire department or a retired member of the 1937 fund dies and leaves:

- (1) a surviving spouse;
- (2) a child or children less than eighteen (18) years of age;
- (3) a child or children at least eighteen (18) years of age who are mentally or physically incapacitated; or
- (4) a child or children less than twenty-three (23) years of age who are:

(A) enrolled in and regularly attending a secondary school; or

(B) full-time students at an accredited college or university;

the local board shall authorize the payment to the surviving spouse and to the child or children the amount from the fund as prescribed by this section. If the surviving spouse of a deceased member remarried before September 1, 1983, and pension benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by

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virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund that is prescribed by this section.

(d) If a member dies while in active service or after retirement:

(1) the surviving spouse is entitled to receive an amount fixed by ordinance but not less than:

(A) for the surviving spouse of a member who dies before January 1, 1989, thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; ~~and~~

(B) for the surviving spouse of a member who dies after December 31, 1988, except as otherwise provided in this ~~clause, subdivision~~, an amount per month, during the spouse's life, equal to the greater of thirty percent (30%) of the monthly pay of a first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death (these amounts shall be proportionately increased or decreased if the salary of a first class firefighter is increased or decreased). However, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for purposes of computing the second amount under this item, the member's benefit is considered to be fifty percent (50%) of the monthly salary of a first class firefighter in the unit at the time of payment of the pension; ~~or~~

(C) for a second class city that adopts an ordinance under IC 36-8-1-11.5, for the surviving spouse of a member, an amount per month, during the spouse's life, equal to the greater of thirty percent (30%) of the monthly salary of the member at the time of death or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death. However, if the deceased member was not entitled to a benefit because the member had not completed twenty

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(20) years of service, for purposes of computing the second amount under this clause, the member's benefit is considered to be fifty percent (50%) of the monthly salary of the member at the time of death;

(2) the member's children who are:

(A) less than eighteen (18) years of age; or

(B) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;

are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension, **or for a second class city that adopts an ordinance under IC 36-8-1-11.5, not less than twenty percent (20%) of the salary of the member at the time of death;** and

(3) each parent of a deceased member who was eligible for a pension is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension, **or for a second class city that adopts an ordinance under IC 36-8-1-11.5, not less than thirty percent (30%) of the salary of the member at the time of death.**

If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2)(B), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(e) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

SECTION 15. IC 36-8-7-12.4, AS AMENDED BY P.L.86-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12.4. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) **Except as otherwise provided in this section,** if a member dies

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in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a fully paid first class firefighter. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly salary of the member at the time of death.

(d) Except as otherwise provided in this section, if a member dies in the line of duty while in active service after August 31, 1982, the member's children who are:

- (1) less than eighteen (18) years of age; or
 - (2) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;
- are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(e) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. If a member dies in the line of duty while in active service, the member's children who are:

- (1) less than eighteen (18) years of age; or
 - (2) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;
- are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of the member at the time of death.

~~(d)~~ **(f) The surviving children of the deceased member who are**

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eligible to receive a benefit under subsection ~~(c)~~ (d) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the monthly wage received by a first class firefighter. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(g) **This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. The surviving children of the deceased member who are eligible to receive a benefit under subsection (e) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the salary of the member at the time of death. However, this limitation does not apply to the children of a member who are physically or mentally disabled.**

~~(c)~~ (h) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund. Each parent of a deceased member who was eligible for a pension under this subsection is entitled to receive jointly an amount equal to:

- (1) thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; or
- (2) **for a second class city that adopts an ordinance under IC 36-8-1-11.5, thirty percent (30%) of the salary of the member at the time of death.**

~~(f)~~ (i) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from any action that the member, in the member's capacity as a firefighter:

- (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (2) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

~~(g)~~ (j) If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subsection ~~(c)(2); (d)(2) or (e)(2)~~, the child is entitled

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to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(k) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(l) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

(m) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for the coverage under subdivision (1), (2), or (3).

SECTION 16. IC 36-8-7-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 28. (a) This section applies to a second class city that adopts an ordinance under IC 36-8-1-11.5.**

(b) A cost of living adjustment to the monthly benefit of a member of the 1937 fund is determined in the same manner as a cost of living adjustment to the monthly benefit of a member of the 1977 police officers' and firefighters' pension and disability fund is determined under IC 36-8-8-15.

SECTION 17. IC 36-8-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8. (a) Each fund member shall contribute during the period of his the member's employment or for thirty-two (32) years, whichever is shorter:**

- (1) an amount equal to six percent (6%) of the salary of a first**

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1 class patrolman or firefighter; or
 2 **(2) for a second class city that adopts an ordinance under**
 3 **IC 36-8-1-11.5, an amount equal to six percent (6%) of the**
 4 **salary of the member.**

5 However, the employer may pay all or a part of the contribution for the
 6 member. The amount of the contribution, other than contributions paid
 7 on behalf of a member, shall be deducted each pay period from each
 8 fund member's salary by the disbursing officer of the employer. The
 9 employer shall send to the PERF board each year on March 31, June
 10 30, September 30, and December 31, for the calendar quarters ending
 11 on those dates, a certified list of fund members and a warrant issued by
 12 the employer for the total amount deducted for fund members'
 13 contributions.

14 (b) If a fund member ends ~~his~~ employment other than by death or
 15 disability before ~~he~~ **the member** completes twenty (20) years of active
 16 service, the PERF board shall return to ~~him~~ **the member** in a lump sum
 17 ~~his~~ contributions plus interest as determined by the PERF board. If the
 18 fund member returns to service, ~~he~~ **the member** is entitled to credit for
 19 the years of service for which ~~his~~ **the member's** contributions were
 20 refunded if ~~he~~ **the member** repays the amount refunded to ~~him~~ **the**
 21 **member** in either a lump sum or a series of payments determined by
 22 the PERF board.

23 SECTION 18. IC 36-8-8-9 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) This section
 25 applies to all police officers and firefighters who converted their
 26 benefits under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both of which were
 27 repealed September 1, 1981).

28 (b) A police officer or firefighter who converted ~~his~~ **the police**
 29 **officer's or firefighter's** benefits from a 1925, 1937, or 1953 fund to
 30 the benefits and conditions of this chapter is not entitled to receive any
 31 benefits from the original fund. However, ~~he~~ **the police officer or**
 32 **firefighter** is entitled to credit for all years of service for which ~~he~~ **the**
 33 **police officer or firefighter** would have received credit before ~~his~~
 34 conversion in that original fund.

35 (c) A police officer or firefighter who:

- 36 (1) converted ~~his~~ **the police officer's or firefighter's** benefits
- 37 from a 1925, 1937, or 1953 fund;
- 38 (2) retired or became disabled on or before June 30, 1998; and
- 39 (3) is entitled to receive benefits provided under this chapter
- 40 based on the eligibility requirements of this chapter;

41 shall be treated as a member of this fund for purposes of paying ~~his~~ **the**
 42 **police officer's or firefighter's** benefits from the 1977 fund effective

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for benefits paid on or after October 1, 1998. Prior to October 1, 1998, ~~he~~ **the police officer or firefighter** remains a member of the original fund entitled to receive only the benefits provided under this chapter based on the eligibility requirements of this chapter.

(d) A police officer or firefighter who:

(1) converted ~~his~~ **the police officer's or firefighter's** benefits from a 1925, 1937, or 1953 fund;

(2) ~~who~~ did not retire or become disabled on or before June 30, 1998; and

(3) ~~who~~ is entitled to receive benefits provided under this chapter based on the eligibility requirements of this chapter; remains a member of that original fund but is entitled to receive only the benefits provided under this chapter and based on the eligibility requirements of this chapter.

(e) A police officer or firefighter who converted shall contribute:

(1) six percent (6%) of the salary of a first class patrolman or firefighter; **or**

(2) **for a second class city that adopts an ordinance under IC 36-8-1-11.5, an amount equal to six percent (6%) of the salary of the member;**

to the 1925, 1937, or 1953 fund. This amount shall be deducted from ~~his~~ **the police officer's or firefighter's** salary each pay period by the disbursing officer of the employer. Contributions under this subsection may not be refunded.

SECTION 19. IC 36-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) **Except as provided in subsection (c),** each fund member who qualifies for a retirement benefit payment under section 10(b) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended ~~his~~ active service plus:

(1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each full year of active service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of active service;

over twenty (20) years, to a maximum of twelve (12) years.

(c) **This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. Each fund member who qualifies for a retirement benefit under section 10(b) of this chapter is entitled to receive an annual benefit equal to fifty percent (50%) of**

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1 the average salary of the member, payable in at least twelve (12)
2 equal monthly installments.

3 (d) Except as provided in subsection (e), each fund member who
4 qualifies for a retirement benefit payment under section 10(c) of this
5 chapter is entitled to receive a monthly benefit equal to fifty percent
6 (50%) of the monthly salary of a first class patrolman or firefighter in
7 the year the member ended his active service plus one percent (1%) of
8 that salary for each six (6) months of active service over twenty (20)
9 years, to a maximum of twelve (12) years, all actuarially reduced for
10 each month (if any) of benefit payments prior to fifty-two (52) years of
11 age, by a factor established by the fund's actuary from time to time.

12 (e) This subsection applies to a second class city that adopts an
13 ordinance under IC 36-8-1-11.5. Each fund member who qualifies
14 for a retirement benefit payment under section 10(c) of this
15 chapter is entitled to receive an annual benefit equal to fifty
16 percent (50%) of the average salary of the member at the time the
17 member ended active service, payable in at least twelve (12) equal
18 monthly installments and actuarially reduced for each month (if
19 any) of benefit payments before the member becomes fifty-two (52)
20 years of age, by a factor established periodically by the fund's
21 actuary.

22 SECTION 20. IC 36-8-8-13.5 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13.5. (a) This section
24 applies only to a fund member who:

- 25 (1) is hired for the first time after December 31, 1989;
- 26 (2) chooses coverage by this section and section 12.5 of this
- 27 chapter under section 12.4 of this chapter; or
- 28 (3) is described in section 12.3(c)(2) of this chapter.

29 (b) A fund member who is determined to have a Class 1 impairment
30 and for whom it is determined that there is no suitable and available
31 work within the fund member's department, considering reasonable
32 accommodation to the extent required by the Americans with
33 Disabilities Act, is entitled to a monthly base benefit equal to:

- 34 (1) forty-five percent (45%) of the monthly salary of a first class
- 35 patrolman or firefighter; or
- 36 (2) for a second class city that adopts an ordinance under
- 37 IC 36-8-1-11.5, forty-five percent (45%) of the monthly salary
- 38 of the member;

39 in the year of the local board's determination of impairment.

40 (c) A fund member who is determined to have a Class 2 impairment
41 and for whom it is determined that there is no suitable and available
42 work within the fund member's department, considering reasonable

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accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to:

(1) twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service; **or**

(2) for a second class city that adopts an ordinance under IC 36-8-1-11.5, twenty-two percent (22%) of the monthly salary of the member in the year of the local board's determination of impairment.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to:

(1) the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter; **or**

(2) for a second class city that adopts an ordinance under IC 36-8-1-11.5, the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of the member;

in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund:

(A) the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter; **or**

(B) for a second class city that adopts an ordinance under IC 36-8-1-11.5, the fund member is entitled to a monthly

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base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of the member;

in the year of the local board's determination of impairment.

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and

(C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment occurs before the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(4) A fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment is related in any manner to the Class 3 excludable condition.

(5) If during the first four (4) years of service with the employer:

(A) a fund member with a Class 3 excludable condition is determined to have a Class 3 impairment; and

(B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;

the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an

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accidental injury. The local board shall forward the initial determination to the director of the PERF board for a final determination by the PERF board or the PERF board's designee.

(f) If a fund member is entitled to a monthly base benefit under:

(1) subsection ~~(b)~~; ~~(c)~~; ~~(d)~~; ~~or (e)~~ **(b)(1), (c)(1), (d)(1), or (e)(1)(A)**, the fund member is also entitled to a monthly amount that is ~~no~~ **not** less than ten percent (10%) and ~~no greater~~ **not more** than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; **or**

(2) subsection (b)(2), (c)(2), (d)(2), or (e)(1)(B), the fund member is also entitled to a monthly amount that is not less than ten percent (10%) and not more than forty-five percent (45%) of the monthly salary of the member in the year of the local board's determination of impairment.

The additional monthly amount **under subdivision (1) or (2)** shall be determined by the PERF medical authority based on the degree of impairment.

(g) Benefits for a Class 1 impairment are payable until the fund member becomes fifty-two (52) years of age. Benefits for a Class 2 and a Class 3 impairment are payable:

(1) for a period equal to:

(A) the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; **or**

(B) for a second class city that adopts an ordinance under IC 36-8-1-11.5, the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of the member in the year of the local board's determination of impairment and the member has less than four (4) years of service; or

(2) until the member becomes fifty-two (52) years of age:

(A) if the member's benefit is:

~~(A)~~ **(i)** equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; **or**

~~(B)~~ **(ii)** less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service; **or**

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(B) for a second class city that adopts an ordinance under IC 36-8-1-11.5, if the member's benefit is:

- (i) equal to or more than thirty percent (30%) of the monthly salary of the member in the year of the local board's determination of impairment; or**
- (ii) less than thirty percent (30%) of the monthly salary of the member in the year of the local board's determination of impairment if the member has at least four (4) years of service.**

(h) Upon becoming fifty-two (52) years of age, a fund member with a Class 1 or Class 2 impairment is entitled to receive the retirement benefit payable to a fund member with:

- (1) twenty (20) years of service; or
- (2) the total years of service and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age;

whichever is greater.

(i) Upon becoming fifty-two (52) years of age a fund member:

(1) who is receiving or has received a Class 3 impairment benefit that is:

- ~~(1)~~ **(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or**
- ~~(2)~~ **(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service; or**

(2) for a second class city that adopts an ordinance under IC 36-8-1-11.5, who is receiving or has received a Class 3 impairment benefit that is:

- (A) equal to or more than thirty percent (30%) of the monthly salary of the member in the year of the local board's determination of impairment; or**
- (B) less than thirty percent (30%) of the monthly salary of the member in the year of the local board's determination of impairment if the member has at least four (4) years of service;**

is entitled to receive the retirement benefit payable to a fund member with twenty (20) years of service.

(j) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

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- (1) has had a covered impairment;
- (2) recovers and returns to active service with the department; and
- (3) within two (2) years after returning to active service has an impairment that, except for section 12.3(b)(3) of this chapter, would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

SECTION 21. IC 36-8-8-13.8, AS ADDED BY P.L.118-2000, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13.8. (a) This section applies to an active or a retired member who dies other than in the line of duty (as defined in section 14.1 of this chapter) after August 31, 1982.

(b) **Except as provided in subsection (c)**, if a fund member dies while receiving retirement or disability benefits, the following apply:

- (1) Except as otherwise provided in this subsection, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

- (A) until the child becomes eighteen (18) years of age; or
- (B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

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(2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If a fund member dies while receiving retirement or disability benefits, there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents, if qualified, are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(c) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. If a fund member dies while receiving retirement or disability benefits, the following apply:

(1) Except as otherwise provided in this subsection, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(A) until the child becomes eighteen (18) years of age; or

(B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly salary of the member or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(2) The member's surviving spouse is entitled to a monthly

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benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime.

If a fund member dies while receiving retirement or disability benefits, there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(d) Except as otherwise provided in this subsection, if a fund member dies while on active duty or while retired and not receiving benefits, the member's children and the member's spouse, or the member's parent or parents are entitled to receive a monthly benefit determined under ~~subsection~~ subsections (b) and (c). If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit is computed as if the member:

(1) did have twenty (20) years of service; and

(2) was fifty-two (52) years of age.

SECTION 22. IC 36-8-8-14.1, AS AMENDED BY P.L.86-2003, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) This section applies to an active member who dies in the line of duty after August 31, 1982.

(c) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to a monthly benefit during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years service at fifty-two (52) years of age. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(d) **Except as provided in subsection (e)**, if a fund member dies in the line of duty, each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(1) until the child reaches eighteen (18) years of age; or

(2) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or

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1 is a full-time student at an accredited college or university;
 2 whichever period is longer. However, if the board finds upon the
 3 submission of satisfactory proof that a child who is at least eighteen
 4 (18) years of age is mentally or physically incapacitated, is not a ward
 5 of the state, and is not receiving a benefit under subdivision (2), the
 6 child is entitled to receive an amount each month that is equal to the
 7 greater of thirty percent (30%) of the monthly pay of a first class
 8 patrolman or first class firefighter or fifty-five percent (55%) of the
 9 monthly benefit the deceased member was receiving or was entitled to
 10 receive on the date of the member's death as long as the mental or
 11 physical incapacity of the child continues. Benefits paid for a child
 12 shall be paid to the surviving parent as long as the child resides with
 13 and is supported by the surviving parent. If the surviving parent dies,
 14 the benefits shall be paid to the legal guardian of the child.

15 **(e) This subsection applies to a second class city that adopts an**
 16 **ordinance under IC 36-8-1-11.5. If a fund member dies in the line**
 17 **of duty, each of the member's surviving children is entitled to a**
 18 **monthly benefit equal to twenty percent (20%) of the fund**
 19 **member's monthly benefit:**

- 20 (1) until the child becomes eighteen (18) years of age; or
- 21 (2) until the child becomes twenty-three (23) years of age if
- 22 the child is enrolled in and regularly attending a secondary
- 23 school or is a full-time student at an accredited college or
- 24 university;

25 whichever period is longer. However, if the board finds upon the
 26 submission of satisfactory proof that a child who is at least eighteen
 27 (18) years of age is mentally or physically incapacitated, is not a
 28 ward of the state, and is not receiving a benefit under subdivision
 29 (2), the child is entitled to receive an amount each month that is
 30 equal to the greater of thirty percent (30%) of the monthly salary
 31 of the member at the time of death or fifty-five percent (55%) of
 32 the monthly benefit the deceased member was receiving or was
 33 entitled to receive on the date of the member's death as long as the
 34 mental or physical incapacity of the child continues. Benefits paid
 35 for a child shall be paid to the surviving parent as long as the child
 36 resides with and is supported by the surviving parent. If the
 37 surviving parent dies, the benefits shall be paid to the legal
 38 guardian of the child.

39 **(f) If there is no surviving eligible child or spouse, and there is proof**
 40 **satisfactory to the local board, subject to review in the manner**
 41 **specified in section 13.1(b) of this chapter, that the parent was wholly**
 42 **dependent on the fund member, the member's surviving parent is**

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entitled, or both surviving parents, if qualified, are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(f) (g) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member:

(1) did have twenty (20) years of service; and

(2) was fifty-two (52) years of age.

(g) (h) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from:

(1) any action that the member, in the member's capacity as a police officer:

(A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(B) performs in the course of controlling or reducing crime or enforcing the criminal law; or

(2) any action that the member, in the member's capacity as a firefighter:

(A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(B) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) (i) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for coverage under subdivision (1), (2), or (3).

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SECTION 23. IC 36-8-8-18, AS AMENDED BY P.L.61-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) Except as provided in subsection (b) **or (c)**, if a unit becomes a participant in the 1977 fund, credit for prior service by police officers (including prior service as a full-time, fully paid town marshal or full-time, fully paid deputy town marshal by a police officer employed by a metropolitan board of police commissioners) or by firefighters before the date of participation may be given by the PERF board only if:

(1) the unit contributes to the 1977 fund the amount necessary to amortize prior service liability over a period of not more than forty (40) years, the amount and period to be determined by the PERF board; and

(2) the police officers or firefighters pay, either in a lump sum or in a series of payments determined by the PERF board, the amount that they would have contributed if they had been members of the 1977 fund during their prior service.

If the requirements of subdivisions (1) and (2) are not met, a fund member is entitled to credit only for years of service after the date of participation.

(b) **Except as provided in subsection (c)**, if a unit becomes a participant in the 1977 fund under section 3(c) of this chapter, or if a firefighter becomes a member of the 1977 fund under section 7(g) of this chapter credit for prior service before the date of participation or membership shall be given by the PERF board as follows:

(1) For a member who will accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, the member will be given credit in the 1977 fund for one-third (1/3) of the member's years of participation in PERF as a police officer, a firefighter, or an emergency medical technician.

(2) For a member who will not accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, such prior service shall be given only if:

(A) The unit contributes to the 1977 fund the amount necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary earned by a first class firefighter at the time the unit becomes a participant

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in the 1977 fund, or the firefighter becomes a member of the 1977 fund, or if no such salary designation exists, the actual salary earned by the firefighter. However, credit for prior service is limited to the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter reaches the earliest retirement age under the 1977 fund at the time of the member's date of participation in the 1977 fund. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical technician under section 7(g) of this chapter.

(B) The amount the firefighter would have contributed if the firefighter had been a member of the 1977 fund during the firefighter's prior service must be fully paid and must be based on the firefighter's actual salary earned during that period before service can be credited under this section.

(C) Any amortization schedule for contributions paid under clause (A) and contributions to be paid under clause (B) must include interest at a rate determined by the PERF board.

(3) If, at the time a unit entered the 1977 fund, the unit contributed the amount required by subdivision (2) so that a fund member received the maximum prior service credit allowed by subdivision (2) and, at a later date, the earliest retirement age was lowered, the unit may contribute to the 1977 fund on the fund member's behalf an additional amount that is determined in the same manner as under subdivision (2) with respect to the additional prior service, if any, available as a result of the lower retirement age. If the unit pays the additional amount described in this subdivision in accordance with the requirements of subdivision (2), the fund member shall receive the additional service credit necessary for the fund member to retire at the lower earliest retirement age.

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(c) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. If a unit becomes a participant in the 1977 fund under section 3(c) of this chapter, or if a firefighter becomes a member of the 1977 fund under section 7(g) of this chapter, credit for prior service before the date of participation or membership shall be given by the PERF board as follows:

(1) For a member who will accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, the member will be given credit in the 1977 fund for one-third (1/3) of the member's years of participation in PERF as a police officer, a firefighter, or an emergency medical technician.

(2) For a member who will not accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, credit for such prior service shall be given only if:

(A) The unit contributes to the 1977 fund the amount necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary of the member at the time the unit becomes a participant in the 1977 fund, or the firefighter becomes a member of the 1977 fund. However, credit for prior service is limited to the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter reaches the earliest retirement age under the 1977 fund at the time of the member's date of participation in the 1977 fund. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical

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technician under section 7(g) of this chapter.

(B) The amount the firefighter would have contributed if the firefighter had been a member of the 1977 fund during the firefighter's prior service must be fully paid and must be based on the firefighter's actual salary earned during that period before service can be credited under this section.

(C) Any amortization schedule for contributions paid under clause (A) and contributions to be paid under clause (B) must include interest at a rate determined by the PERF board.

(3) If, at the time a unit entered the 1977 fund, the unit contributed the amount required by subdivision (2) so that a fund member received the maximum prior service credit allowed by subdivision (2) and, at a later date, the earliest retirement age was lowered, the unit may contribute to the 1977 fund on the fund member's behalf an additional amount that is determined in the same manner as under subdivision (2) with respect to the additional prior service, if any, available as a result of the lower retirement age. If the unit pays the additional amount described in this subdivision in accordance with the requirements of subdivision (2), the fund member shall receive the additional service credit necessary for the fund member to retire at the lower earliest retirement age.

(d) This subsection applies to a unit that:

- (1) becomes a participant in the 1977 fund under section 3(c) of this chapter; and
- (2) is a fire protection district created under IC 36-8-11 that includes a township or a municipality that had a 1937 fund.

A firefighter who continues uninterrupted service with a unit covered by this subsection and who participated in the township or municipality 1937 fund is entitled to receive service credit for such service in the 1977 fund. However, credit for such service is limited to the amount accrued by the firefighter in the 1937 fund or the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter becomes fifty-five (55) years of age, whichever is less.

~~(d)~~ (e) The unit shall contribute into the 1977 fund the amount necessary to fund the amount of past service determined in accordance with subsection ~~(c)~~, (d), amortized over a period not to exceed ten (10) years with interest at a rate determined by the PERF board.

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~~(e)~~ (f) If the township or municipality has accumulated money in its 1937 fund, any amount accumulated that exceeds the present value of all projected future benefits from the 1937 plan shall be paid by the township or municipality to the unit for the sole purpose of making the contributions determined in subsection ~~(d)~~: (e).

~~(f)~~ (g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

~~(g)~~ (h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the 1977 fund may accept, on behalf of a fund member who is purchasing permissive service credit under this chapter, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

SECTION 24. IC 36-8-8.5-7, AS ADDED BY P.L.62-2002, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. As used in this chapter, "DROP frozen benefit" means a member's monthly retirement benefit calculated under the provisions of the applicable fund and based on:

(1) the salary of:

(A) a first class officer or firefighter that is in effect on the member's DROP entry date; **or**

(B) **for a second class city that adopts an ordinance under IC 36-8-1-11.5, the member on the member's DROP entry date; and**

(2) the member's years of service accrued on the member's DROP entry date.

SECTION 25. IC 36-8-8.5-13, AS ADDED BY P.L.62-2002, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 13. (a) **Except as provided in subsection (b),** a cost of living adjustment to the monthly benefit of a member of the 1925 fund, 1937 fund, or 1953 fund is determined in STEP FOUR of the following formula:

STEP ONE: Calculate a percentage by dividing:

(A) the amount of any increase in the salary of a first class officer or firefighter, whichever is applicable; by

(B) the prior year's salary of a first class officer or firefighter, whichever is applicable.

STEP TWO: Add:

(A) the member's DROP frozen benefit; and

(B) the amount of any prior cost of living adjustments calculated under this section.

STEP THREE: Multiply the percentage determined under STEP ONE by the sum determined under STEP TWO.

STEP FOUR: Add the product determined under STEP THREE to the sum determined under STEP TWO.

(b) This subsection applies to a second class city that adopts an ordinance under IC 36-8-1-11.5. A cost of living adjustment to the monthly benefit of a member of the 1925 fund or 1937 fund is determined in the same manner as a cost of living adjustment to the monthly benefit of a member of the 1977 fund is determined under IC 36-8-8, as applied after the member's DROP retirement date.

(c) A cost of living adjustment to the monthly benefit of a member of the 1977 fund is determined under the provisions of IC 36-8-8, as applied after the member's DROP retirement date.

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